



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the Act, I find that the tenants were duly served with the application.

### Preliminary Issue – Late Evidence

The tenants testified that on August 24, 2016 they forwarded a 7 page evidence package via courier to the landlord. The tenants provided a courier tracking number as proof of service. The landlord testified that he did not receive the tenants' 7 page evidence package.

The Residential Tenancy Branch Temporary Order that allows service of documents by courier establishes that applications are considered sufficiently served if the sender requests signature upon delivery and;

- the recipient of the documents signs a document provided by the courier which acknowledges receipt; or
- the courier leaves a notice of attempted delivery in the mailbox or posted to the door; or
- if the courier is not able to leave the notice of attempted delivery in the mailbox or posted to the door, the courier leaves the notice of attempted delivery in a conspicuous place and the sender provides proof that they have attempted to contact the recipient by telephone or email to inform the recipient of the attempted delivery; and
- any document sent by courier during this period is deemed to have been received on the actual date of delivery in cases where the recipient of the document signs a document acknowledging receipt, or on the 5th day after the document or the delivery attempt notice is sent, in any other case.

Although the tenants have provided a tracking number, they have not provided a signed document provided by the courier that establishes the landlord received the package. Accordingly, I do not find that the tenants' 7 page evidence package was sufficiently served and for this reason I have not relied on the package to form any part of my decision.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2012 on a fixed term. Rent in the amount of \$1,700.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$850.00 and a pet deposit in the amount of \$850.00 at the start of the tenancy. The tenants vacated the rental unit April 26, 2016.

The parties agreed that a written condition inspection report was completed at the start and end of the tenancy.

### Landlord

The landlord testified that he was seeking \$20,603.80 in damages.

#### *Carpet replacement*

The landlord testified that the eight year old carpets were stained and discoloured from pet urine and feces. The landlord had an employee of a floor company assess the rental unit carpet on April 25, 2016. As per the submitted witness statement from the floor company employee, all carpets required removal as a professional carpet cleaning company would not have removed the odour and stains that permeated the underlay. The landlord provided pictures of the carpet and underlay. The landlord provided a copy of the carpet receipt in the amount of \$5,586.53. The landlord seeks to recover this amount from the tenants.

#### *Landscape/yard clean up*

The landlord submitted a copy of the signed tenancy agreement and attached addendum that indicates the tenants are responsible for yard maintenance. The landlord testified that the tenants and landlord had verbally agreed that the landlord would provide a landscape service, and the tenants would be responsible for paying for the cost of this service. The landlord testified that the tenants failed to pay for the landscape service from January 2016 to April 2016. The landlord provided a receipt in the amount of \$319.00 and seeks to recover this amount from the tenants.

#### *Paint*

The landlord provided a copy of an estimate to repaint the entire rental unit in the amount of \$7,219.53. The landlord acknowledged this work has not been conducted to date.

#### *Tiled floors*

The landlord testified that approximately 125 square feet of tile floor requires replacement. The landlord provided pictures of the tile and an estimate in the amount of \$2,882.78 to replace the tile. The landlord acknowledged this work has not been conducted to date.

#### *Interior cleaning*

The landlord provided a statement from an individual they hired to clean the rental unit. The statement indicates a strong animal odour was present and the cleaning took six

hours to complete. The landlord did not submit a receipt but testified he paid the cleaner \$150.00 in cash and requests to recover this amount from the tenants.

*Crawl space cleaning*

The landlord testified that the crawlspace contained animal feces and urine that he personally had to clean. The landlord submitted pictures of the crawl space. The landlord seeks to recover 20 hours of his time at \$25.00 per hour for a total of \$500.00.

*Security alarm repair*

The landlord testified that the tenants' cat chewed the alarm wire and consequently the landlord incurred a cost of \$68.25 he seeks to recover from the tenants. The landlord submitted a receipt.

*Laminate replacement*

The landlord provided a copy of an estimate to replace laminate flooring in the rental unit in the amount of \$3,377.71. The landlord acknowledged this work has not been conducted to date.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

*Tenants Reply*

*Carpet replacement*

The tenants testified that they scheduled carpet cleaning for April 28, 2016 at 9:00 a.m. but at the direction of the landlord they cancelled the carpet cleaning. The landlord, who was moving into the rental unit himself, advised the tenants that he had scheduled his own moving truck for April 27, 2016 and therefore did not want the carpets cleaned on April 28, 2016. Further, the landlord told the tenants that it was likely time to replace the carpets upstairs. The landlord told the tenants he would assess the carpets and if he determined the carpets required replacement there was no need to clean them. The landlord had the carpets assessed by a floor company and advised the tenants the carpets would be removed on April 26, 2016 and replaced on April 27, 2016. The tenants did not have the carpets cleaned as per the instruction of the landlord and the landlord removed the carpets prior to the move-out condition inspection report.

The tenants acknowledged the carpets had some stains from spilled beverages and pets.

*Landscape/yard clean up*

The tenants agreed they had not paid the outstanding landscaping costs.

*Paint*

The tenants did not provide a reply in regards to the paint.

*Tiled floors*

The tenants did not provide a reply in regards to the tile floors.

*Interior cleaning*

The tenants agreed that the cleaning was not completed due the landlord's early possession of the rental unit.

*Crawl space cleaning*

Upon vacating the tenants were unaware the crawl space contained feces and urine, but do not dispute it was likely the result of their pets.

*Security alarm repair*

The tenants acknowledged their cat damaged the wire to the security alarm.

*Laminate replacement*

The tenants did not provide a reply in regards to the laminate flooring.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

*Carpet replacement*

Although the landlord provided evidence in the form of pictures that the carpets contained stains, I find the landlord failed to mitigate his loss by at least attempting to remove the stains through carpet cleaning. I attribute little evidentiary weight to the witness statement of an employee of a floor sale and install company that indicates the carpets need replacement. For these reasons, I dismiss this portion of the landlord's claim.

*Landscape/yard clean up*

Based on the submitted tenancy agreement and admission of the tenants I find the landlord is entitled to the recovery of the landscaping costs in the amount of \$319.00.

*Paint, Tile floors and Laminate replacement*

Although the landlord provided estimates to repaint the entire rental unit and replace the tile and laminate floor, I find these portions of the landlord's claim premature as the work has not been conducted to date. Therefore, I dismiss these portions of the landlord's claim.

*Interior cleaning*

The landlord did not dispute that he requested the tenants vacate a few days earlier to accommodate his moving truck rental. Although the parties agreed cleaning was not completed, I find the landlord failed to mitigate his loss by allowing the tenants adequate time to clean the rental unit prior to his own possession of the rental unit. For this reason I dismiss this portion of the landlord's claim.

*Crawl space cleaning*

Based on the tenants' admission, and the photos before me, I find the landlord is entitled to compensation for cleanup of the crawl space; however I do not find the landlord is entitled to compensation in the amount of \$500.00. I find the landlord has provided insufficient evidence to substantiate the task took him 20 hours to complete. The photos submitted do not portray an overly large crawl space or an abundant amount of animal waste. For this reason I award the landlord a nominal award in the amount of \$100.00.

*Security alarm repair*

Based on the admission of the tenants I find the landlord is entitled to the recovery of the security alarm repair in the amount of \$68.25.

*Total Damages*

In total, I award the landlord damages of \$319.00 for the landscape/yard clean up, \$100.00 for crawl space cleaning, and \$68.25 for the security alarm repair for a total of \$487.25.

*Filing Fee*

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee for a total award of \$537.25.

*Security Deposit*

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$537.25 of the \$1,700.00 security and pet deposits in full satisfaction of the monetary award. The tenant is entitled to the remaining \$1,162.75 security and pet deposit balance.

### Conclusion

The landlord is entitled to \$537.25. I order the landlord to retain \$537.25 from the security and pet deposits in full compensation of this amount. The tenant is entitled to the return of the balance of the security and pet deposits. I therefore grant the tenant a monetary order for the balance of the deposits, in the amount of \$1,162.75.

The landlord's application for damages in relation to carpet replacement and interior cleaning is dismissed without leave to reapply.

The landlord's application for damages in relation to paint, tile and laminate replacement is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 15, 2016

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Residential Tenancy Branch